

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

WESLEY WILLIAMS,

Plaintiff,

vs.

**9:21-CV-302
(TJM/CFH)**

KEPRO, et al.,

Defendant.

**Thomas J. McAvoy,
Sr. U.S. District Judge**

DECISION & ORDER

The Court referred this *pro se* civil action to Magistrate Judge Christian F. Hummel for a Report-Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule 72.3(c). Plaintiff, proceeding *pro se* and *in forma pauperis*, alleges pursuant to 42 U.S.C. § 1983 (“Section 1983”) that Defendants violated his Eighth Amendment right to be free of cruel and unusual punishment. At the times relevant to this action, Plaintiff was a prisoner in the custody of the New York Department of Corrections and Community Supervision (“DOCCS”). Plaintiff alleges that the Defendants failed to provide him with proper treatment for a medical condition, causing him unnecessary pain. Defendant Kepro, an outside company employed by DOCCS to review incarcerated persons’ requests for medical services and determine whether DOCCS’s health care plan covered such procedures, filed a motion for summary judgment. See *dk. # 108*.

Judge Hummel's Report-Recommendation, issued on August 8, 2023, recommends that Kepro's motion for summary judgment be granted. While Judge Hummel disagrees with Kepro's argument that the company is not a state actor and therefore cannot be liable under Section 1983, Judge Hummel finds that no evidence supports a finding that Kepro could be liable for violating Plaintiff's rights pursuant to a policy or custom which Kepro had created. As such, Judge Hummel concludes, Kepro cannot be liable and is entitled to summary judgment.

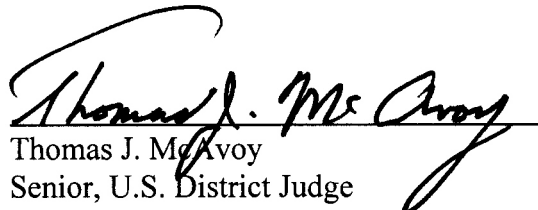
No party objected to the Report-Recommendation, and the time for such objections has expired. After examining the record, this Court has determined that the Report-Recommendation is not subject to attack for plain error or manifest injustice and the Court will accept and adopt the Report-Recommendation for the reasons stated therein.

Accordingly,

The Report-Recommendation of Judge Hummel, dkt. # 111, is hereby **ACCEPTED** and **ADOPTED**. Kepro's motion for summary judgment is hereby **GRANTED** and Plaintiff's claim against Kepro in his Amended Complaint is hereby **DISMISSED WITH PREJUDICE**.

IT IS SO ORDERED.

Dated: September 7, 2023


Thomas J. McAvoy
Senior, U.S. District Judge